IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 356 of 1997

in

SPECIAL CIVIL APPLICATIONNo 2316 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? yes

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2. To be referred to the Reporter or not? yes

3. Whether Their Lordships wish to see the fair copy of the judgement? no

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? no

5. Whether it is to be circulated to the Civil Judge? no

RAMESHBHAI V PARIKH

Versus

SR SUPERINTENDENT OF POST OFFICE

Appearance:

MR MEHUL SHARAD SHAH with MR PK JANI for Petitioners

MR KETAN A DAVE for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 04/07/97

ORAL JUDGEMENT (per:Thakker.J)

Admitted.

Mr. Ketan Dave learned counsel waives service of notice on behalf of respondent. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This Letters Patent Appeal is directed against an order passed by the learned single Judge summarily dismissing Special Civil Application No.2316 of 1997 on March 26,1997. By that order, the learned single Judge rejected the petition filed by the petitioner on the ground that alternative remedy is available to the petitioner and since it has not been availed of the High Court would not interfere under article 226 of the Constitution.

3. We have heard Mr. P.K.Jani learned counsel for the appellant. He submitted that the order passed by the learned single Judge is contrary to law. He also submitted that the action taken by the authorities is unlawful and the same requires interference by this court. He mainly raised three contentions.

1. Before passing the impugned order, the authority has not issued any notice, called for explanation and not afforded an opportunity of hearing and thus the order is not in consonance with the principles of natural justice and the same is required to be interfered with.

2. The authority has committed an error in holding that "Vaishnav Parivar " cannot be said to be a "newspaper" within the meaning of Rule 30 of IPO Rules 1933 read with Clauses 169 of PO Guide part-1.

3. There is an error apparent on the face of record committed by the learned single Judge in holding that alternative remedy is available to the appellant. Clause 10 of Licence to Post Without Pre-payment of Postage of News papers on the basis of which the learned single Judge dismissed the petition, does not apply to instant case and no alternative remedy is available to

the appellants.

3. Mr. Ketan Dave learned counsel for the respondent on the other hand supported the order passed by the respondent as also the order passed by the learned single Judge. He submitted that observance of principles of natural justice was not necessary since the licence granted to the appellant was not cancelled and/or revoked . By afflux of time, it came to an end . The licence was upto the year 1996 and and thereafter, the appellant had no right to make grievance of non compliance of the principles of natural justice.

4. On second ground Mr.Dave submitted that after proper application of mind the authority had recorded a finding that periodical of the appellant could not fall within the connotation "Newspaper" and hence , the appellant would not be entitled to claim licence. Such an order passed by the authority in bonafide exercise of power could not be said to be illegal and the court cannot substitute its opinion for the opinion of the authority.

5. Regarding the third contention, the counsel submitted that the learned Judge has not committed any error in rejecting the petition and even if it is assumed that clause 10 could not be attracted, the order passed by the learned single Judge rejecting the petition was otherwise legal and proper. This court therefore may not interfere with the order passed by the learned single Judge.

6. On the first contention our attention was invited to the decision of the Supreme Court in the case of M/s Raj Restaurant and anor. vs. Municipal Corporation of Delhi AIR 1982 SC 1550. In that case also, the licence was not renewed and before non renewal of licence, opportunity of hearing was not afforded. In para 5 of the judgment,the Court observed :

"Where, in order to carry on business a licence is required, obviously refusal to give licence or cancellation or revocation of licence would be visited with both civil and pecuniary consequences and as the business cannot be carried on without the licence it would also affect the liveli hood of the person. In such a situation before either refusing to renew the licence or cancelling or natural justice of

> notice and opportunity to represent one's case is a must. It is not disputed that no such opportunity was given before taking the decision not to renew the licence though it is admitted that for the reasons hereinbefore set out the licence was not renewed Such a decision in violation of the minimum principle of natural justice would be void. Now, it is true that no specific order is made setting out the reasons for refusal to renew the licence. But the action taken for sealing the premises for carrying on the business without a licence clearly implies that there was refusal to renew the licence and the reasons are not disclosed. And the action disclosing the decision being in violation of the principle of natural justice, deserves to be quashed."

In the instant case also the period of licence came to an end in 1996. It is true that for renewal of licence fresh application is required. It was however pointed out to us that for renewal of licence, an application could be made within a period of one month before the expiry of licence. Hence it was open to the appellant to make such an application on 30.11.96. In the instant case however, a communication was sent regarding non renewal of licence on 1.11.96. Virtually therefore the appellant was deprived of making an application for renewal of licence inasmuch as before the expiry of time limit on 30.11.96, a decision was taken by the authority on 1.11.96. In our opinion therefore the petition deserves to be allowed.

6. So far as the second ground is concerned Mr. Jani submitted that the periodical published by the appellant could be said to be a "newspaper" . For that purpose, reliance was placed on Rule 30 of IPO Rules in which 'Newspaper' is mentioned . It was submitted that it is a definition clause under which it is not necessary that the publication must relate to political news. It may contain 'other news' or 'other current topics.' Mr.Jani submitted that the periodical published by the appellant would fall atleast in one of them i.e. " other news" or " other current topics". He also contended that though the application was rejected and it was held that the periodical published by the appellant could not be said to be covered by the definition "newspaper", no reason whatsoever has been recorded and the order is laconic in nature. There appears to be some substance in the said contention. In our opinion, however, it is not necessary to express final opinion as we are setting

aside the order on the ground of violation of the principles of natural justice. It is for the authorities to go into these contentions of the appellant and to come to its own conclusion after giving opportunity of hearing to the appellant.

7. Regarding third contention we are satisfied that there is no alternative remedy available to the appellant and the learned single Judge ought not to have dismissed the petition on that ground. Clause 10 on which reliance was placed deals with altogether a different situation. That clause can be attracted only when there is some "dispute" as to the effect of licence without pre payment of postal charges. Such is not the dispute here. Hence, in our opinion, the learned Judge in placing reliance upon clause 10 has committed an error and the Appeal deserves to be allowed.

8. For the foregoing reasons this Letters Patent Appeal is allowed. The orders passed by the respondent and by the learned single Judge are hereby quashed and set aside. The respondent will again pass an appropriate order on merits after affording reasonable opportunity of being heard to the appellant. We make it clear that whatever facilities the appellant was getting during the intervening period will be continued till the respondent decides the application of the appellant and for two weeks thereafter. We may say that it is for the authority to decide the application without being influenced in any manner by the observations made by the learned single Judge or by us. No order as to costs.

D.S.

(C.K.Thakker.J)

(S.D.Pandit.J)